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HUMAN RIGHTS QUESTIONS: CAPITAL PUNISHMENT

Report of the Third Committee (Part VI)*

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I. INTRODUCTION

1. At its 56th plenary meeting, on 14 November 1994, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its forty-ninth session the item entitled "Human rights questions: (e) Capital punishment" and to allocate it to the Third Committee.

2. For the documents before the Third Committee under item 100 (e), see document A/49/610.

3. The Committee considered item 100 (e) at its 33rd, 34th, 36th, 38th to 41st, 43rd, 50th, 57th, 60th and 61st meetings, on 16, 17, 21 to 23 and 25 November and on 1 and 7 to 9 December 1994. An account of the Committee's discussion is contained in the relevant summary records (A/C.3/49/SR.33, 34, 36, 38-41, 43, 50, 57, 60 and 61).

4. At the 33rd meeting, on 16 November, the Assistant Secretary-General for Human Rights made an introductory statement (see A/C.3/49/SR.33).

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* The report of the Committee on agenda item 100 will be issued in six parts, under the symbol A/49/610 and Add.1-5.

II. CONSIDERATION OF DRAFT RESOLUTION A/C.3/49/L.32 AND REV.1 AND AMENDMENTS (A/C.3/49/L.73 AND REV.1 AND A/C.3/49/L.74 AND REV.1)

5. At the 50th meeting, on 1 December, the representative of Italy, on behalf of Andorra, Australia, Austria, Belgium, Cambodia, Cape Verde, Chile, Colombia, Costa Rica, the Czech Republic, Denmark, Ecuador, Finland, France, Greece, Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Monaco, the Netherlands, Nicaragua, Norway, Panama, Paraguay, Portugal, Romania, San Marino, Spain, Sweden, Uruguay and Vanuatu, as well as Bolivia, Germany, Micronesia (Federated States of) and Venezuela, subsequently joined by Argentina, Cyprus, El Salvador, New Zealand, the Dominican Republic, Solomon Islands, Sao Tome and Principe and Slovakia, introduced a draft resolution entitled "Capital punishment" (A/C.3/49/L.32), which read:

"The General Assembly,

"Recalling article 3 of the Universal Declaration of Human Rights, 1/ which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights 2/ and articles 6 and 37 (a) of the Convention on the Rights of the Child, 3/

"Recalling its resolutions 2857 (XXVI) of 20 December 1971, 32/61 of 8 December 1977 and 44/128 of 15 December 1989, by the latter of which it adopted and opened for signature the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

"Recalling also Economic and Social Council resolutions 1574 (L) of 20 May 1971, 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1990/29 of 24 May 1990 and 1990/51 of 24 July 1990,

"Deeply concerned that in some countries that have not yet abolished the death penalty sentence of death is imposed for other than the most serious crimes,

"Also concerned that several countries impose the death penalty on juveniles, pregnant women and insane persons, in disregard of the limitations provided for in the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984,

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1/ Resolution 217 A (III).

2/ Resolution 220 A (XXI), annex.

3/ Resolution 44/25.

"Welcoming that in the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, the statute of the ad hoc international criminal tribunal on Rwanda and the draft statute for an international criminal court elaborated by the International Law Commission, 4/ capital punishment is excluded from the penalties that these Courts are authorized to impose,

"Convinced that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights,

"1. Calls upon all States that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

"2. Urges all States that still maintain the death penalty to comply fully with their obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, and in particular to exclude pregnant women and juveniles from capital executions;

"3. Invites all States that have not yet abolished the death penalty to consider the progressive restriction of the number of offences for which the death penalty may be imposed and to exclude insane persons from capital executions;

"4. Encourages all States that have not yet abolished the death penalty to consider the opportunity of instituting a moratorium on pending executions with a view to ensuring that the principle that no State should dispose of the life of any human being be affirmed in every part of the world by the year 2000."

6. At the 57th meeting, on 7 December, the representative of Singapore moved, under rule 116 of the rules of procedure, that no action be taken on draft resolution A/C.3/49/L.32.

7. At the same meeting, statements in favour of the motion were made by the representatives of Algeria and Bangladesh and statements against the motion were made by the representatives of Italy and Ireland (see A/C.3/49/SR.57).

8. Also at the same meeting, the Committee rejected the motion by a recorded vote of 65 to 74, with 20 abstentions. The voting was as follows:

4/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10), chap. II, sect. B.5.

In favour: Afghanistan, Algeria, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Bhutan, Brunei Darussalam, Burkina Faso, China, Comoros, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Egypt, Fiji, Gabon, Grenada, Guinea, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kuwait, Lebanon, Lesotho, Libyan Arab Jamahiriya, Malawi, Malaysia, Maldives, Mauritania, Mongolia, Morocco, Myanmar, Nigeria, Oman, Pakistan, Papua New Guinea, Qatar, Republic of Korea, Saint Kitts and Nevis, Samoa, Saudi Arabia, Senegal, Sierra Leone, Singapore, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, United Republic of Tanzania, Viet Nam, Yemen, Zambia, Zimbabwe.

Against: Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Cambodia, Canada, Cape Verde, Central African Republic, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Saint Lucia, San Marino, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, the former Yugoslav Republic of Macedonia, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Vanuatu, Venezuela.

Abstaining: Albania, Azerbaijan, Belarus, Belize, Benin, Botswana, Cameroon, Ethiopia, Gambia, Ghana, Japan, Kazakhstan, Kenya, Mali, Mauritius, Niger, Peru, Philippines, Tunisia, Ukraine.

9. Also at the 57th meeting, the representative of Singapore orally proposed an amendment to draft resolution A/C.3/49/L.32, to insert a new preambular paragraph after the last preambular paragraph, reading:

> "Affirming the sovereign right of States to determine the legal measures and penalties which are appropriate in their societies to combat serious crimes effectively".

10. At the same meeting, the representative of Egypt orally proposed amendments to draft resolution A/C.3/49/L.32, as follows:

(a) In the last preambular paragraph, the word "Convinced" would be replaced with the word "Noting";

(b) In operative paragraph 1, the words "Calls upon" would be replaced with the word "Invites";

(c) In operative paragraph 2, the word "Urges" would be replaced with the word "Encourages".

11. At the same meeting, the representative of India made a statement proposing to defer action on the oral amendments (see A/C.3/49/SR.57).

12. At the same meeting, following statements by the representatives of Slovenia, Italy, Singapore, France and China (see A/C.3/49/SR.57), the Committee decided, without a vote, to postpone action on the draft resolution and the amendments thereto.

13. On 7 December, the representative of Singapore submitted an amendment (A/C.3/49/L.73) to draft resolution A/C.3/49/L.32, by which a new preambular paragraph would be inserted after the last preambular paragraph, reading:

> "Affirming the sovereign right of States to determine the legal measures and penalties which are appropriate in their societies to combat serious crimes effectively".

14. Also on 7 December, the representative of Egypt submitted an amendment (A/C.3/49/L.74) to draft resolution A/C.3/49/L.32, by which:

(a) In the last preambular paragraph, the word "Convinced" would be replaced with the word "Noting";

(b) In operative paragraph 1, the words "Calls upon" would be replaced with the word "Invites";

(c) In operative paragraph 2, the word "Urges" would be replaced with the word "Encourages".

15. At the 60th meeting, on 8 December, the representative of Italy orally revised draft resolution A/C.3/49/L.32, as follows:

(a) In the seventh preambular paragraph, the word "Convinced" was replaced with the word "Noting";

(b) A new preambular paragraph was inserted as the last preambular paragraph, which read:

> "Reaffirming the sovereign right of States to determine, in accordance with international law, including the Charter of the United Nations, the legal measures and penalties which are appropriate to deal with the most serious crimes";

(c) In operative paragraph 1, the words "Calls upon" were replaced with the word "Invites";

(d) In operative paragraph 2, the word "parties" was inserted after the word "States".

16. At the same meeting, statements were made by the representatives of Singapore, Ireland and Finland (see A/C.3/49/SR.60).

17. Also at the same meeting, the representative of Singapore introduced the amendment contained in document A/C.3/49/L.73 (see para. 13).

18. At the same meeting, statements were made by the representatives of Egypt, Finland, Mauritania, Algeria, Ireland, India and Nigeria, as well as by the Chairman (see A/C.3/49/SR.60).

19. Also at the 60th meeting, following a motion put forward by the representative of Ireland, in accordance with rule 119 (a) of the rules of procedure, the meeting was suspended.

20. Upon resumption of the meeting, statements were made by the representatives of Singapore, Egypt, India, Italy, Ireland and Algeria (see A/C.3/49/SR.60).

21. At the 61st meeting, on 9 December, the Committee had before it revised draft resolution A/C.3/49/L.32/Rev.1, which incorporated the oral revisions made by the representative of Italy at the 60th meeting (see para. 15 above), submitted by the sponsors of draft resolution A/C.3/49/L.32, with the exception of the Netherlands. Subsequently, Argentina, Bolivia, Cyprus, the Dominican Republic, El Salvador, Germany, Micronesia (Federated States of), New Zealand, Sao Tome and Principe, Slovakia, Solomon Islands and Venezuela joined in sponsoring the revised draft resolution.

22. At the same meeting, the Committee also had before it a revised amendment (A/C.3/49/L.73/Rev.1) to the revised draft resolution submitted by Singapore, by which the last preambular paragraph would be replaced with the following:

> "Affirming the sovereign right of States to determine the legal measures and penalties which are appropriate in their societies to combat serious crimes effectively".

23. At the same meeting, statements were made by the representatives of Singapore, Ireland, Andorra, Malta, Germany and Egypt (see A/C.3/49/SR.61).

24. Also at the 61st meeting, the Committee adopted the revised amendment contained in document A/C.3/49/L.73/Rev.1 by a recorded vote of 71 to 65, with 21 abstentions. The voting was as follows:

In favour: Afghanistan, Algeria, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Bhutan, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, China, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Egypt, Eritrea, Grenada, Guinea, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Malaysia, Maldives, Mauritania, Mongolia, Morocco, Myanmar, Namibia, Nigeria, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone,

Singapore, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Tanzania, Uzbekistan, Viet Nam, Yemen, Zambia, Zimbabwe.

Against: Andorra, Angola, Argentina, Armenia, Australia, Austria, Belgium, Brazil, Bulgaria, Cambodia, Canada, Cape Verde, Chile, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Micronesia (Federated States of), Monaco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Vanuatu, Venezuela.

Abstaining: Albania, Azerbaijan, Belarus, Benin, Bolivia, Croatia, Ecuador, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Guatemala, Kazakhstan, Mali, Mauritius, Mexico, Niger, Togo, Ukraine.

25. At the same meeting, after the adoption of the revised amendment, the sponsors of revised draft resolution A/C.3/49/L.32/Rev.1 withdrew their sponsorship of the revised draft resolution.

26. At the same meeting, the Committee also had before it a revised amendment (A/C.3/49/L.74/Rev.1) to the revised draft resolution submitted by Egypt, by which in operative paragraph 2, the word "Urges" would be replaced with the word "Encourages".

27. At the same meeting, on the proposal of the representative of Egypt, the Committee decided, without a vote, to take no action on the proposed amendment contained in document A/C.3/49/L.74/Rev.1.

28. At the same meeting, the Secretary of the Committee read out a legal opinion in connection with revised draft resolution A/C.3/49/L.32/Rev.1, as follows:

> "The underlying idea of rule 122 was that an amended proposal was no longer the exclusive property of its original sponsors and could therefore no longer be withdrawn by them. However, the sponsors maintained their freedom of action and until such time as the electronic voting machine was turned on, they could withdraw their names from the list of sponsors. In fact a draft resolution which had been amended could theoretically be without sponsors."

29. At the same meeting, the representative of Italy made a statement (see A/C.3/49/SR.61).

30. At the same meeting, the representative of Egypt moved that no action be taken on revised draft resolution A/C.3/49/L.32/Rev.1, as amended.

31. At the same meeting, statements in favour of the motion were made by the representatives of Saudi Arabia and Australia and statements against the motion were made by the representatives of Ireland and Italy (see A/C.3/49/SR.61).

32. The motion was rejected by a vote of 60 to 71, with 23 abstentions. The voting was as follows:

In favour: Afghanistan, Algeria, Antigua and Barbuda, Australia, Bahamas, Bahrain, Bangladesh, Barbados, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, China, Comoros, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Egypt, Gabon, Grenada, Guinea, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kuwait, Lebanon, Lesotho, Libyan Arab Jamahiriya, Maldives, Mauritania, Mongolia, Morocco, Myanmar, Nigeria, Oman, Pakistan, Papua New Guinea, Peru, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Sudan, Suriname, Syrian Arab Republic, Trinidad and Tobago, Uganda, United Arab Emirates, United Republic of Tanzania, Viet Nam, Yemen, Zambia, Zimbabwe.

Against: Andorra, Argentina, Armenia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Cambodia, Canada, Cape Verde, Central African Republic, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Haiti, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, the former Yugoslav Republic of Macedonia, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela.

Abstaining: Albania, Azerbaijan, Belarus, Belize, Benin, Ethiopia, Gambia, Ghana, Honduras, Japan, Kazakhstan, Kenya, Kyrgyzstan, Malaysia, Mali, Mauritius, Mexico, Niger, Philippines, Sri Lanka, Thailand, Tunisia, Ukraine.

33. At the same meeting, statements were made by the representatives of Ireland, Honduras, Denmark (on behalf of the Nordic countries), India, Yemen, Brunei Darussalam, Canada, Algeria, Egypt, Malaysia, Senegal, New Zealand, Kuwait, Portugal, Australia, the Democratic People's Republic of Korea, the Sudan, Saudi Arabia, Andorra, Côte d'Ivoire, France, Malta, Jamaica, Costa Rica, the United Arab Emirates and Peru (see A/C.3/49/SR.61).

34. Also at the 61st meeting, on 9 December, the Committee rejected revised draft resolution A/C.3/49/L.32/Rev.1, as amended, by a recorded vote of 36 to 44, with 74 abstentions. The voting was as follows: 5/

In favour: Argentina, Armenia, Cambodia, Cape Verde, Chile, Colombia, Costa Rica, Croatia, Cyprus, Ecuador, El Salvador, Fiji, Gambia, Georgia, Greece, Haiti, Ireland, Israel, Italy, Kyrgyzstan, Malta, Marshall Islands, Mexico, Mozambique, Namibia, Nepal, Nicaragua, Panama, Paraguay, Portugal, San Marino, Slovenia, the former Yugoslav Republic of Macedonia, Uruguay, Uzbekistan, Venezuela.

Against: Afghanistan, Algeria, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Brunei Darussalam, Cameroon, China, Comoros, Egypt, Guinea, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Maldives, Morocco, Myanmar, Nigeria, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Sudan, Syrian Arab Republic, Trinidad and Tobago, United Arab Emirates, United States of America, Yemen.

Abstaining: Albania, Andorra, Australia, Austria, Azerbaijan, Belarus, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Canada, Côte d'Ivoire, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Estonia, Ethiopia, Finland, France, Gabon, Germany, Grenada, Guatemala, Honduras, Hungary, Iceland, Kazakhstan, Kenya, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Mauritius, Micronesia (Federated States of), Monaco, Mongolia, Netherlands, New Zealand, Niger, Norway, Papua New Guinea, Peru, Philippines, Poland, Republic of Moldova, Romania, Russian Federation, Slovakia, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Thailand, Togo, Tunisia, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Vanuatu, Viet Nam, Zambia, Zimbabwe.

35. After the vote on revised draft resolution A/C.3/49/L.32/Rev.1, as amended, statements were made by the representatives of Brazil, Honduras, Antigua and Barbuda, Viet Nam, Guyana, Slovenia, Ghana, Belize, the Republic of Korea, Cuba, the Gambia and Nepal (see A/C.3/49/SR.61).

5/ Subsequently, the representative of Angola indicated that had he been present, he would have voted in favour of the revised draft resolution, as amended; the representative of Ghana indicated that had he been present, he would have abstained; and the representative of Brazil indicated that his vote should have been recorded as in favour.